



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2004

Ms. Sandra Smith
Executive Director
Texas State Board of Chiropractic Examiners
333 Guadalupe, Suite 3-825
Austin, Texas 78701-3942

OR2004-5079

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203890.

The Texas Board of Chiropractic Examiners (the "board") received a request for the file of a specific chiropractor. You claim that the submitted information is excepted from disclosure under sections 552.026, 552.114, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address the transcripts in the submitted information, which you claim are excepted from disclosure pursuant to sections 552.026 and 552.114. Section 552.026 incorporates Family Educational Rights and Privacy Act of 1974 ("FERPA") into the Public Information Act (the "Act"). *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. This office generally applies the same analysis under section 552.114 and FERPA. *See* Open Records Decision No. 539 (1990). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or

institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). We note that the board is not an educational agency or institution.

However, FERPA provides that an educational agency or institution may only transfer personal information to a third party "on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student." *Id.* § 1232g(b)(4)(B). The federal regulations provide that a third party that receives such information from an educational agency may use the information only for the purposes for which the disclosure was made. 34 C.F.R. § 99.33(a)(2). The transcript from San Jacinto College indicates that it was sent directly to the board. Pursuant to FERPA, the board may only release this transcript upon consent of the chiropractor. It appears that the board received the Texas Chiropractic College transcript directly from the educational institution. If so, the board may only release the transcript upon consent of the chiropractor. If the board did not receive this transcript from the educational institution, then it may not withhold the transcript under FERPA.

We note the presence of social security numbers in the submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. Section 58.001 of the Occupations Code provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 58.001.¹ Two types of documents included in the submitted information contain social security numbers made confidential by section 58.001: the chiropractic facility applications for registration, which contain the social security numbers of the owners of the

¹As of the date of this letter ruling, two different sections of the Occupations Code are denominated as section 58.001. The section relating to "[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession" was renumbered from section 56.001 of the Occupations Code to section 58.001 of the Occupations Code by the Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Gen. Laws 4140, 4146.

facilities; and the transcripts of the chiropractor who is the subject of the request for information. We find that the social security numbers contained in those documents are confidential under section 58.001 of the Occupations Code and thus must be withheld from disclosure under section 552.101 of the Government Code.

The submitted information contains Texas drivers' license numbers. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The board must withhold marked the Texas driver's license numbers under section 552.130.

We now address the marked account information in the submitted documents. Section 552.136 provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The board must, therefore, withhold the account numbers we have marked pursuant to section 552.136.

The submitted information also contains e-mail addresses obtained from the public. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The board must, therefore, withhold the marked e-mail addresses of members of the public under section 552.137.

In summary, FERPA requires the board to withhold the San Jacinto College transcript unless it receives the chiropractor's consent for release. FERPA may require the board to withhold the Texas Chiropractic College transcript unless it receives the chiropractor's consent for release. The chiropractor's and facility owners' social security numbers are confidential under section 58.001 of the Occupations Code and thus must be withheld under section 552.101 of the Government Code. The board must withhold the marked Texas drivers'

license numbers pursuant to section 552.130. The board must withhold the marked account numbers pursuant to section 552.136. Finally, the board must withhold the marked e-mail addresses pursuant to section 552.137. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. David Floyd', with a stylized flourish extending from the end.

W. David Floyd
Assistant Attorney General
Open Records Division

WDF/sdk

Ref: ID# 203890

Enc. Submitted documents

c: Ms. Elizabeth Trevino
Rios & Associates
3555 Timmons Lane
Houston, Texas 77027
(w/o enclosures)